

AMENDED IN ASSEMBLY JUNE 24, 2004

AMENDED IN SENATE MAY 25, 2004

AMENDED IN SENATE MAY 3, 2004

AMENDED IN SENATE APRIL 20, 2004

**SENATE BILL**

**No. 1822**

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**Introduced by Senator Figueroa**

February 20, 2004

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An act to add Title 1.81.15 (commencing with Section 1798.88) to Part 4 of Division 3 of the Civil Code, relating to privacy, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1822, as amended, Figueroa. Privacy: online communications.

Existing law protects the privacy of personal information, including customer records and social security numbers. Existing law prohibits a person or entity located in California from initiating or advertising in unsolicited commercial e-mail advertisements, as defined, and prohibits a person or entity not located in California from initiating or advertising in unsolicited commercial e-mail advertisements sent to a California e-mail address.

This bill would allow a provider of e-mail or instant messaging services to review, examine, or evaluate the content of a customer's e-mail or instant messages only if the review is for the automated and contemporaneous display of an advertisement to the user and other specified conditions are satisfied. The bill would provide that its provisions do not prevent a provider of e-mail or instant messaging services from evaluating the contents of e-mail or instant messages for

specified purposes, including the removal of malicious programs. The bill would specify that its provisions do not imply consent to the examination of e-mail or instant messages if consent is otherwise required. The bill would also make a statement of Legislative findings regarding privacy of electronic mail.

*The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) In today's world of advanced communications technology,
- 3 privacy is a major concern of consumers and of the Legislature.
- 4 (b) A key component of privacy is the trust consumers have in
- 5 service providers who make promises to their customers and the
- 6 public concerning the manner in which intimate and confidential
- 7 data will be treated.
- 8 (c) There are currently widespread operational and legitimate
- 9 electronic mail technologies and practices that scan incoming
- 10 messages for appropriate and useful purposes including the
- 11 following:
  - 12 (1) Spam filters.
  - 13 (2) Translation of content into audio for the blind.
  - 14 (3) Automatic sorting and forwarding.
  - 15 (4) Blocking image advertisements and Internet Web bugs.
  - 16 (5) Stripping hypertext markup language from incoming
  - 17 messages for transmission to hand-held devices.
- 18 (d) In the context of electronic mail and instant messaging
- 19 communications where electronic mail is scanned for purposes
- 20 other than those listed in subdivision (c), full and informed consent
- 21 or notification of parties to the electronic mail communication is
- 22 both appropriate and necessary.
- 23 SEC. 2. Title 1.81.15 (commencing with Section 1798.88) is
- 24 added to Part 4 of Division 3 of the Civil Code, to read:
- 25



TITLE 1.81.15. PRIVACY OF ONLINE  
COMMUNICATIONS

1798.88. For the purpose of this title:

(a) “Deletes an electronic communication” means \_\_\_\_.

(b) “Electronic mail” or “e-mail” means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt or is viewed upon transmission or stored for later retrieval. “Electronic mail” or “e-mail” includes electronic messages that are transmitted through a local, regional, or global computer network.

(c) “Instant messaging service” means a service that alerts a person when another person is online and allows them to communicate with each other in current time in private, online areas.

(d) “Provider of electronic mail or instant messaging service” means any person, including an Internet service provider, that is an intermediary in sending or receiving electronic mail or instant messages or that provides to users of the electronic mail or instant messaging service the ability to send or receive electronic mail or instant messages.

(e) “Spam” means an unsolicited commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

(1) The recipient has not provided direct consent to receive advertisements from the advertiser.

(2) The recipient does not have a preexisting or current business relationship with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

1798.88.1. (a) “Provider of electronic mail or instant messaging service” does not include a business’ provision of electronic mail or instant message services to its own employees, agents, and contractors for use in the operation of the business.

(b) A provider of electronic mail or instant messaging service may review, examine, or otherwise evaluate the content of a customer’s incoming, outgoing, or stored e-mail or instant

1 messages only if the review is for the automated and  
2 contemporaneous display of an advertisement to the user while the  
3 user is viewing the e-mail or instant message and all of the  
4 following conditions are satisfied:

5 (1) The provider does not retain for any purpose, personally  
6 identifiable information or user characteristics obtained, derived,  
7 or inferred from the review, examination, or other evaluation of  
8 e-mail or instant messages, including, but not limited to,  
9 personally identifiable information or user characteristics derived  
10 from the contents of any e-mail or instant message, in whole or in  
11 part.

12 (2) The provider does not permit an employee or other natural  
13 person to have access to the information, except as described in  
14 subdivision (d).

15 (3) The provider does not transfer the information to third  
16 parties for any purpose, except as described in subdivision (d).

17 (4) The provider deletes an electronic communication no more  
18 than \_\_\_\_ days after the customer has indicated that he or she  
19 desires that communication be deleted in such a way that the  
20 communication is no longer obtainable in any retrievable format.

21 (c) This section does not prevent a provider of electronic mail  
22 or instant messaging service to California customers from  
23 reviewing, examining, or otherwise evaluating the contents of  
24 e-mail or instant messages for the purposes of maintaining e-mail  
25 or instant messaging accounts, including, but not limited to,  
26 identifying, filtering, or removing spam, computer viruses, or  
27 other malicious programs, providing search, address book,  
28 calendar, and other user initiated functions, customer support, or  
29 complying with valid legal process or statutory authority.

30 (d) Nothing in this section concerning the review, examination,  
31 or evaluation of e-mail or instant messages shall imply the consent  
32 of any party to that procedure where the consent of a party would  
33 otherwise be required.

34 *SEC. 3. This act is an urgency statute necessary for the*  
35 *immediate preservation of the public peace, health, or safety*  
36 *within the meaning of Article IV of the Constitution and shall go*  
37 *into immediate effect. The facts constituting the necessity are:*

38 *In order to ensure privacy with regard to the impending*  
39 *introduction of new technology that permits the scanning of e-mail*

- 1 *content for advertising purposes, it is necessary that this act take*
- 2 *effect immediately.*

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